



SMALL CLAIMS COURT

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Overview

The small claims court is not a separate court, but a special session of the District Court, the Boston Municipal Court or the Housing Court. It is designed to provide a simple, informal and inexpensive procedure for the resolution of smaller cases (\$2,000 or less). The information below is provided to assist those persons wishing to proceed in District Court.

Forms

If you choose to file a small claims action, or if you are a defendant in a small claims action, the District Court has forms which will be helpful in bringing the appropriate issues to the attention of the court. All small claims forms are available in the clerk's office of any of the 62 district courts.

How do I bring a small claims action?

By filing a court form called a "Statement of Claim and Notice of Trial" and paying a filing fee. The form is available in the clerk's office of any of the 62 district courts.

Where do I file a small claim?

You may bring a small claim only in the court for the area where either the plaintiff or the defendant lives or has a place of business or employment. A small claim against a landlord arising from the rental of an apartment may also be brought where the apartment is located. You may find it easier to enforce a decision in your favor if you bring your small claim where the defendant lives or works, but you are not required to do so.

Which claims can be brought as small claims?

Actions may be brought in Small Claims Court for almost any type of claim, including breach of contract, wrongfully withheld money, damage or loss of property, consumer complaints, or return of a security deposit. Actions may not be brought in Small Claims Court for professional malpractice, child support, alimony or probate matters. A claimant may only recover up to \$2,000, unless treble damages are awarded. If damages exceed \$2,000 a claimant should consider filing the action in another court.

Will I be able to collect from the defendant?

As a plaintiff you should be aware that income of the defendant derived from certain sources will be exempt from an order of judgment.

What is the filing fee for a small claim?

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The filing fee for small claims \$500 and under is \$30.00. The filing fee for claims over \$500.00 is \$40.00.

How is the defendant notified of the claim?

The defendant is sent a copy of the "Statement of Claim and Notice of Trial" by first class mail. If the defendant lives out of state he will be notified by certified mail. Both types of notices will be provided by the court, after a "Statement of Claim and Notice of Trial" form is filed.

Will my case go forward if the defendant has not received notice?

If the Post Office is unable to notify ("serve") the defendant and the letter is returned to the court your case cannot go forward. If the letter is not returned, but later shown to have never been delivered, or to have been sent to the wrong address, any judgment you have received may be vacated. For this reason it is crucial that you make sure that the address entered for the defendant on the "Statement of Claim and Notice of Trial" form is accurate.

Are attorneys needed in small claims court?

No, but you may hire one if you wish.

What are "costs"?

If the plaintiff prevails, or if both sides settle the claim, the plaintiff may recover from the defendant as "costs" the court filing fee. By court order the plaintiff may sometimes recover certain other costs of bringing the claim.

Is the defendant required to file an answer?

The defendant may send a signed letter to the court, saying clearly and simply why the plaintiff should not prevail. This "answer" should state those specific parts of the claim that are denied. However, the defendant is not required to file an answer. The defendant must send the plaintiff a copy of the answer, if one is filed. In the answer, or in a separate letter to the court, the defendant may set forth in writing any claim against the plaintiff within the jurisdiction of small claims court. Both claims will be treated as one case if the defendant mails a copy of his or her claim to the plaintiff at least ten days before the scheduled trial date, or if the magistrate orders that they be so treated. Such claims are not compulsory. The plaintiff need not file a written answer to the defendant's claim.

Is mediation available for small claims?

Mediation is available in many courts on the date of trial. When the case is called and if mediation is available, you will be asked if you would like to mediate your claim.

What if I cannot come to court on the trial date?

You should call or write the person on the opposing side and ask him or her to agree to postpone ("continue") the case. Continuances should only be for good reason, such as illness, an emergency, or the unavailability of a witness. If both sides agree, or if the opposing side does not agree, or if you are unable to reach the person on the opposing

side, you must write the Clerk-Magistrate of the court to ask that the court give you a continuance. Do not wait until the last minute. If the other side makes a reasonable request for a continuance, it may save you some inconvenience if you agree to the request.

What if I do not come to court on the trial date?

If the plaintiff does not appear for trial, and the defendant does appear, the case will be dismissed. If both the plaintiff and the defendant do not appear for trial the claim will also be dismissed. If the defendant does not appear for trial, and the plaintiff does appear, the court will likely enter a default judgment and order the defendant to pay the amount claimed. The magistrate may ask the plaintiff to present some evidence of the claim, even if the defendant is not present.

What will happen on the day of the trial?

Be sure to arrive on time. If your case is not resolved by a mediator, a trial will be held before a magistrate. The plaintiff will be asked to tell his or her side of the story, then the defendant will tell his or her side. Each will have an opportunity to ask questions of the other side and the other side's witnesses. To prevail the law requires the plaintiff to prove the validity of his or her claim.

What will the magistrate do?

The magistrate will make a decision. Notice of the decision (called a "judgment") will be given or sent to each side.

Must I appear at the payment review hearing?

If the Judgment Creditor reports to the clerk-magistrate's office that the Judgment Debtor has paid the judgment in full or the parties have entered into an out-of-court payment agreement, then neither party is required to appear at the scheduled payment review hearing.

If the Judgment Debtor has not paid the judgment in full, or the parties have not otherwise settled the case, then *both* parties must appear at the scheduled payment review hearing. If the Judgment Debtor fails to appear, the Court may issue a civil arrest warrant (*capias*) for his or her arrest.

Is any income exempt from a payment order?

Income to the defendant from the following public assistance and benefit programs is exempt by law from any court small claims payment order:

- Veterans' Benefits
 - Veterans' Benefits pursuant to G.L. c. 115, § 5
 - Veterans' Benefits pursuant to 38 U.S.C. § 5301 (a)
 - Special Benefits for certain WWII Veterans, 42 U.S.C. § 1001
 - Veterans' Medal of Honor Benefits, 38 U.S.C. § 1562
- Transitional Aid to Families with Dependent Children (AFDC) Benefits, G.L. c. 118, § 10
- Unemployment Benefits, G.L. c. 151A, § 36
- Workers' Compensation, G.L. c. 152, § 47

- Social Security Benefits, 42 U.S.C. § 401
- Federal Old-Age, Survivors & Disability Insurance Benefits, 42 U.S.C. § 407
- Maternal Child Health Services Block Grant, 42 U.S.C. § 701
- SSI for Aged, Blind and Disabled, 42 U.S.C. § 1381 (a)

In addition, the following income amount is exempt from a payment order of the court. The exempt amount is whichever of the following is greater:

- (A) the first \$125 of weekly wages per week (G.L. c. 246, § 28) or
- (B) 25% of weekly disposable earnings or the amount by which weekly disposable income exceeds 30 times the minimum hourly wage prescribed by federal law under 29 U.S.C. § 206 (a)(1), whichever is less (15 U.S.C. §§ 1671-1677).

For more information about Small Claims Court in Massachusetts visit:
<http://www.mass.gov/courts/courtsandjudges/courts/districtcourt/smallclaims.html>